

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

JUN 17 2015

SC Court of Appeals

Circuit Case No. 2012-CP-10-3857

Appellate Case No. 2014-002766

Shipwatch Condominium Association, Inc., Appellant,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, Defendants,

Of Which, Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are Respondents.

**APPELLANT'S RETURN TO GLASGOW ROOFING, INC.'S MOTION TO DISMISS
APPEAL, MOTION TO STRIKE, AND MOTION TO FILE OUT OF TIME**

R. Patrick Flynn
Christopher M. Ramsey
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
(843) 723-6470
Attorneys for Appellant

Procedural Background

Appellant filed its Notice of Appeal on December 30, 2014 and named Glasgow Roofing, Inc. as a Respondent. The notice was properly served on all parties to this appeal. On March 2, 2015, Appellant filed and served its Initial Brief. Under Rule 208(a)(2), SCACR, any Respondent who wished to file an Initial Brief was required to serve the same on all parties no later than April 1, 2015. On that day, Respondents Acrocrete, Inc. and Glasstec, Inc. filed a joint motion to dismiss the appeal as to them because they contended they were not “adverse parties.” Appellant filed a return, and Acrocrete and Glasstec filed a reply brief. The Court has not ruled on that motion.

Meanwhile, several Respondents filed Initial Briefs, in some cases after requesting and being granted additional time by the Court. Appellant filed a Reply Brief, and then served the Record on Appeal on all parties on May 26, 2015.

On June 3, 2015, Glasgow Roofing, Inc. filed a Motion to Dismiss and to Strike it as a Respondent from this appeal. In the alternative, Glasgow moved for leave to file its Initial Brief out of time. Glasgow’s excuse for not filing an Initial Brief when it was due two months ago is that it had a good faith belief it was improperly included in the appeal. Glasgow does not explain why it has waited until now to raise the issue of whether it is properly a party to this appeal.

Argument and Citation of Authority

Glasgow’s position that it is not an “adverse party” to the Appellant is without merit and unsupported by the South Carolina Appellate Court Rules or case law, and therefore its Motion to Dismiss and to Strike must be denied. Glasgow relies on the language of Rule 202(a), SCACR. However, that rule only provides guidance as to the proper nomenclature of the parties in an appeal, and does not provide any guidance as to the qualifications of either party to an appeal. Indeed, the

rule only employs the term “adverse party” in order to distinguish the relative positions of the appellant and the respondent. “The party appealing shall be known as the appellant and the adverse party as the respondent.” Id.

It is beyond dispute that Glasgow is a defendant in the underlying cases now on appeal. In its Complaint, Appellant asserted that Glasgow was negligent in the performance of its work at Shipwatch, among other causes of action. Glasgow denied those allegations, thus taking an adverse position to Appellant in this matter.

A plain reading of the hearing transcript indicates that the lower court denied Appellant’s right to assert any claims for work performed at the Shipwatch project prior to 2010. (Transcript of Motion Hearing October 27, 2014, at p. 6; R. p. 467) Appellant alleges in the Complaint that Glasgow performed work at the project before 2010, thus making the substance of this appeal applicable to the claims and defenses relating to this Respondent, which fully justifies its inclusion as a Respondent which is affected by the matter in this appeal.

Glasgow asserts that the Court should grant it additional time to submit an Initial Brief because it held a good faith belief that it was improperly included in the appeal, and thus did not file one sooner. Even if this were the case, it would not explain why Glasgow slept on its rights for weeks while another party filed a Motion to Dismiss on identical grounds. The Record on Appeal has already been completed, and Final Briefs are being filed. To permit Glasgow to file its Initial Brief at this late juncture would push back the schedule for resolution of this appeal by at least three (3) months.¹ If Glasgow genuinely believes that it is not an “adverse party” and has no dog in this

¹The delay would likely be much greater because Glasgow has not yet proffered an Initial Brief to be filed in the event the Court grants its Motion.

fight, then it should not be heard to complain when the other parties proceed without its active participation.

Conclusion

For the foregoing reasons, Glasgow's Motion to Dismiss and to Strike, and its alternative Motion to File Out of Time should be denied.

Respectfully submitted,

ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting St., Suite 300
Charleston, South Carolina 29401
(843) 723-6470
(843) 853-9045 fax

By: 

R. Patrick Flynn

Christopher M. Ramsey

Attorneys for Appellant

Charleston, South Carolina

June 15, 2015

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Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Whom, Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy,
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.;
EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman,
individually, are,

..... Respondents.

CERTIFICATE OF SERVICE

I, Frances Klotsch, an employee of Robertson Hollingsworth & Flynn, hereby certify that I have served parties in this action with a copy of the document(s) via U.S. Mail and Electronic mail as follows:

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
Tupper, Grimsley & Dean, P.A.
P.O. Box 2055
Beaufort, SC 29901
(P) 843-524-1116
ATTORNEYS FOR GLASSTEC, INC.

Paul Sperry, Esquire
Tyler P. Winton, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun St., Suite 400
Charleston, SC 29401
(P) 843-266-8237

**ATTORNEYS FOR SISNROY ENGINEERING, LLC AND
ROBERT G. SISNROY, INDIVIDUALLY**

James H. Elliott, Jr., Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550

AND

J.J. Anderson, Esquire
Danielle Wegener, Esquire
Anderson, Reynolds & Stephens, LLC
37 ½ Broad Street
Charleston, SC 29401
(P) 843 723-0185

ATTORNEYS FOR FIRST EXTERIORS, LLC

David S. Cobb, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29401
(P) 843-576-2800

ATTORNEYS FOR CAROLINA CONCRETE SYSTEMS, INC.

David A. Root, Esquire
Kernodle Root & Coleman
914 Golly Road, Suite 2
Charleston, SC 29412
(P) 843-795-7800

ATTORNEY FOR BASF AND SONNEBORN

R. Britton Kelly, Esquire
Rosen, Rosen & Hagood
P.O. Box 893
Charleston, SC 29402
(P) 843-577-6726

**ATTORNEY FOR EFCO CORP. AND W.C. JOHNSTON
ARCHITECTURAL SALES, INC.**

K. Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms
P.O. Drawer H
Charleston, SC 29402
(P) 577-7700

**ATTORNEY FOR GARY FREEMAN, ARCHITECT AND
GARY FREEMAN, INDIVIDUALLY**

Samia Nettles, Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550

and

L. Dean Best, Esquire
P.O. Box 13466
Charleston, SC 29422
(P) 843-793-4744
(F) 843-793-4278

ATTORNEYS FOR GLASGOW ROOFING

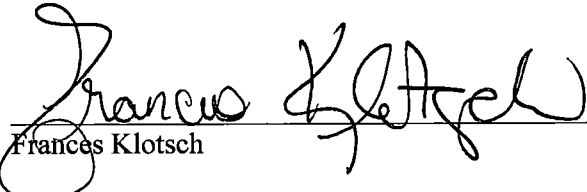
Amanda R. Maybank, Esquire
Marshall A. Earhart, Esquire
Maybank Law Firm, LLC
P.O. Box 12579
Charleston, SC 29422
(P) 843-766-8101

ATTORNEYS FOR CHARLESTON GLASS COMPANY, INC.

Greg Horton, Esquire
Ryan Gilsean, Esquire
Adriane Belton, Esquire
Womble Carlyle
5 Exchange Street
Charleston, SC 29401
(P) 843-722-3400

ATTORNEYS FOR ACROCRETE, INC.

Terrence McKelvey
1084 Winslow Drive
Charleston, SC 29412
(P) 843-559-5074
PRO SE DEFENDANT



Frances Klotsch

June 15, 2015

ROBERTSON HOLLINGSWORTH & FLYNN, LLC
ATTORNEYS AT LAW

177 MEETING STREET, SUITE 300
CHARLESTON, SOUTH CAROLINA 29401
(843) 723-6470 • Fax (843) 853-9045
Email: info@roblaw.net
www.rhflawfirm.com

Claron A. Robertson
Of Counsel

Dunn D. Hollingsworth
R. Patrick Flynn
Theodore L. Manos
Paul R. Rahn
Robert J. Cardillo (SC, IL, MI)
Michael E. Wright
Christopher M. Ramsey (SC, GA)
S. Wallace Carnwath, III (SC, NC)

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Attn: Diane Greene
1015 Sumter Street
Columbia, South Carolina 29201

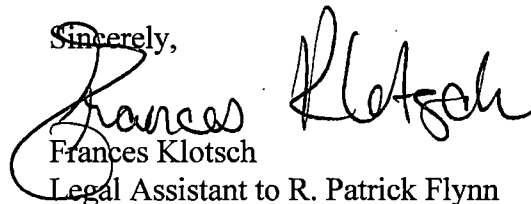
Re: Shipwatch Condominium Association, Inc. vs. Carolina Concrete Systems, et al
Appellate Court No. 2014-002766

Dear Ms. Greene:

I enclose herewith for filing the original and one (1) copy of the Appellant's Return to Glasgow Roofing, Inc.'s Motion to Dismiss Appeal, Motion to Strike, and Motion to File Out of Time in the above referenced matter:

By copy of this letter, I am serving the same upon all counsel of record.

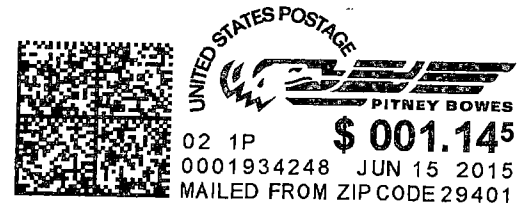
If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

Frances Klotsch
Legal Assistant to R. Patrick Flynn

RPF/fak
Enclosures

cc: All Counsel of Record (via Email)

ROBERTSON HOLLINGSWORTH & FLYNN, LLC
ATTORNEYS AT LAW
177 MEETING STREET, SUITE 300
CHARLESTON, SOUTH CAROLINA 29401



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